



PLANNING & ZONING

AGENDAS & MINUTES

MINUTES OF THE REGULAR MEETING OF SEPTEMBER 6, 2012

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, September 6, 2012, in the County Council Chambers, County Administrative Office Building, in Georgetown, Delaware.

The meeting was called to order at 6:00 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Mr. Michael Johnson, Mr. I.G. Burton, III, Mr. Martin Ross and Mr. Rodney Smith, with Mr. Vincent Robertson – Assistant County Attorney, Mr. Lawrence Lank – Director, and Mr. Shane Abbott – Assistant Director.

Motion by Mr. Smith, seconded by Mr. Ross, and carried unanimously to approve the Agenda as amended by moving Old Business after the Public Hearings. Motion carried 5 – 0.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to approve the Minutes of August 23, 2012 as amended. Motion carried 5 - 0.

PUBLIC HEARINGS

There was a consensus of the Commission that the three applications be considered during one public hearing, acknowledging that each application will have an individual decision.

Mr. Lank introduced the following applications for consideration:

C/Z #1719 – application of **CASTAWAYS BETHANY, LLC** to amend the Comprehensive Zoning Map from MR Medium Density Residential District to a AR-1 Agricultural Residential District to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 5.00 acres, more or less, on two (2) parcels, lying east of Cedar Neck Road (Road 357) across from Sandy Cove Road (Road 358)(part of Tax Map I.D. 1-34-9.00-21.00/24.00).

C/Z #1720 – application of **CASTAWAYS BETHANY, LLC** to amend the Comprehensive Zoning Map from MR Medium Density Residential District to a CR-1 Commercial Residential District to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 1.02 acres, more or less, lying east of Cedar Neck Road (Road 357) across from Sandy Cove Road (Road 358)(part of Tax Map I.D. 1-34-9.00-21.00).

C/U #1944 – application of **CASTAWAYS BETHANY, LLC** to consider the Conditional Use of land in a C-1 General Commercial District, CR-1 Commercial Residential District, a MR Medium Density Residential District, and an AR-1 Agricultural Residential District for multi-family dwelling structures, a campground, and an outdoor amusement place, where permitted as conditional uses, to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 38.53 acres, more or less, lying east of Cedar Neck Road (Road 357) and across from Sandy Cove Road (Road 358)(Tax Map I.D. 1-34-9.00-21.00 and 24.00).

The Commission found that on July 12, 2012 the Applicants submitted an Environmental Assessment and Public Facilities Evaluation Report and Plan for Castaways Bethany as prepared by Land Tech Land Planning, LLC and that the Commission was provided with copies of said Report previous to this Public Hearing for review.

Mr. Lank advised the Commission that the Report contains: a listing of the Consulting Team; an Introduction; references to the proposed land use; the conceptual storm drainage design; potable and fire protection water service; wastewater collection; transmission and treatment; an analysis of traffic; rare, threatened and endangered species; tidal and non-tidal wetlands; open space; public/private infrastructure provisions; economic and recreational impacts; historic or cultural resources; and conformance with the Comprehensive Plan, including references to the Future Land Use Element. The supporting documents attached to the Report include a compilation plat survey, a copy of the approved “Seasons at Bethany” site plan, a Castaways Bethany Master Land Use Plan, a Sussex Shores Water Company letter in reference to water service, a bath house floor plan and elevations, a Service Level Evaluation Request form, a May 21, 2012 letter from DelDOT to the County, a June 11, 2012 Becker Morgan Letter to DelDOT, a June 18, 2012 DelDOT letter to the County, a Becker Morgan Entrance Location Study Plan, an Envirotech Wetland Delineation, and a U.S. Army Corps. of Engineers Preliminary Jurisdictional Determination letter.

Mr. Lank advised the Commission that Preliminary Land Use Service (PLUS) comments, dated May 17, 2012, were received on May 24, 2012 containing 17 pages of comments; that Land Tech Land Planning, LLC responded to the PLUS comments on September 6, 2012 with 23 pages of comments; and that copies would be made available for the Commission.

Mr. Lank advised the Commission that the County Engineering Department Utility Planning Division provided comments on September 5, 2012 relating to the three applications stating that: the project is located in a County operated and maintained sanitary sewer district, the Cedar Neck Expansion of the Bethany Beach Sanitary Sewer District; that wastewater capacity will have to be verified; that capacity may be limited to 205.55 EDU total; that Ordinance 38 construction will be required; that the current System Connection Charge Rate is \$4,825.00 per

EDU; that the parcels have been served with two 8-inch laterals located along the parcel's frontage on Cedar Neck Road and a sewer connection point is available at the southern property line of the County's pump station site located on the north side of Parcel 21; that conformity to the South Coastal Area Planning Study, 2005 Update, will be required; that the parcels are located within the previously referenced Sewer District and that connection to the sewer system is mandatory; that it must be verified that the proposed project is within system design assumptions; that the County requires design and construction of an on-site collection system to meet County Engineering Department's requirements and procedures; that drains from the water park facilities, pools, and pool decks and filter backwashes shall not be connected to the sewer system and the means of providing an alternative disposal method must be documented on the sewer concept plan; that system connection charges will apply; and that a concept plan is required.

Mr. Lank advised the Commission that the Sussex Conservation District provided comments, received on September 6, 2012, in reference to the three applications stating that: there are four soil types mapped for the property; that the Applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that there is a potential impact on flood hazard areas, depending on the limit of construction; that it is not likely that off-site drainage improvements will be necessary; that minimal on-site drainage improvements will be necessary; and that no tax ditches are affected.

Mr. Lank advised the Commission that petitions voicing opposition to this application have been received containing approximately 216 signatures, and that approximately 255 letters and emails have been received voicing opposition; that the petitions, letters, and emails received have come from residents of North Beach, Bayside Hamlet, Quillens Point, Salt Pond, Cedar Landing, Bethany Preserve, Bethany Grand, Pine Crest, The Reservation, Murray's Estates, Bethany Lakes, Bayside at Bethany Lakes, Sandy Cove, Collins Park, and other communities in the Cedar Neck area, along with other individuals; that in summary the concerns expressed include, but are not limited to, increased traffic, traffic safety, pedestrian safety, noise and air pollution, that the use is not compatible, the environmental impacts, lighting, the impact on the James Farm Ecological Preserve, the impact on the Fresh Pond Seashore State Park, road conditions of Cedar Neck Road, bike paths, depreciation of property values, crime, the hours of operation, the density, stormwater issues, sewer capacity, cyclist safety, and emergency response impacts; that there may be some duplication of letters since some parties sent letters, emails and faxes of the same documents; and that he had intended to provide the Commission with copies of the petitions, letters and emails, but had printer problems and could not make copies available at this time.

The Commission found that Todd Burbage, a member of Castaways Bethany, LLC was present with James Fuqua, Jr., Attorney with Fuqua, Yori, and Willard, P.A., Jeff Clark and Paul West of Land Tech Land Planning, LLC, and Garth Jones, Professional Engineer, of the Becker Morgan Group, and that they stated in their presentations and in response to questions raised by the Commission that they have made application for two (2) rezoning requests and a Conditional Use for a campground, multi-family dwelling structures, and a water park amusement facility; that the three (3) applications are of an interwoven design; that they propose to present the applications as one presentation; that they have read a majority of the letters in opposition and will try to address the concerns; that the majority of the site is vacant; that they understand that some impacts will occur; that Cedar Neck Road has a mixture of uses, i.e. single family dwellings, manufactured homes, multi-family dwelling structures, camper parks, business and commercial uses; that the site has wetlands to the east, a single family subdivision to the north, residential uses, RV sales, and a restaurant to the south, and commercial zoning and uses to the west across Cedar Neck Road with a commercial grocery, hardware, sandwich shop, etc.; that the wetlands on the site have been delineated; that the site has been approved for a 143 unit multi-family project (The Seasons At Bethany) which includes multi-family units and townhomes, and a commercial storage facility; that they are proposing three (3) components to the project: 139 campsites with two (2) bathhouses, 60 multi-family duplex rental units, and a water park with slides, pools, a wave pool, a float pool and retail sales of sundries, snacks, and gifts; that the water park will be open to the public; that entry to the park will be gated; that the MR Medium Density Residential to CR-1 Commercial Residential parcel contains 1.02 acres and is adjacent to the existing C-1 General Commercial portion of the site, and is intended to enhance the water park; that the MR Medium Density Residential to AR-1 Agricultural Residential parcel contains 5.0 acres, and is intended as a part of the campground; that the Conditional Use application site includes the entire parcel, with multi-family dwelling structures to the north next to The Reservation, the water park along Cedar Neck Road, and the campground to the rear of the water park; that the County Engineering Department has established a design assumption for the site of 205.55 EDUs; that they have calculated the projects proposed usage at 139 EDU; that the Applicants will pay all applicable charges and fees for sewer services; that the Sussex Shores Water Company has provided an ability to serve letter for the project; that according to the Sussex County Comprehensive Land Use Plan Future Land Use Map the site is located in an Environmentally Sensitive Developing Area, a growth area; that the project is close to other developments and business uses, has access to major roadways, and sewer and water services are available to serve the project; that the use promotes tourism and creates economic benefits; that the project could generate up to 94 full time jobs; that the project will have a positive economic benefit to the area since visitors will also be using local business uses; that the project was submitted to the Preliminary Land Use Service (PLUS) for review and that they participated in the public meeting with State agencies; that they have responded to the PLUS comments

received; that the State and Federal wetlands boundaries have been delineated, and that the U.S. Army Corps. of Engineers have verified the boundaries; that there will be no encroachments into the Federal wetlands, and that there will be a minimum of 60-feet setback from State wetlands; that the site slopes 10-feet from the road to the wetlands; that the entrance location is across from the entrance to the G and E grocery per DelDOT comments; that DelDOT is currently reviewing an entrance design for the project; that a pedestrian crossing is proposed from the entrance area across to the G and E grocery store site; that the 60 multi-family duplex units surround court yards, and that each unit will be provided with two (2) parking spaces; that the units will be two story cottage/bungalow styled units; that the 139 RV campsites will contain a minimum of 2,000 square feet per site, and will be served by a 20-foot wide paved drive, sewer, water, utilities, parking, two bathhouses and laundry services; that there will be a central pedestrian path to the water park and tot lots from the campground area; that four (4) dumpster locations are proposed; that the campsites will be a minimum of 400-feet from any residential unit off of the site, and 100-feet from Cedar Neck Road; that a minimum of a 50-foot wide buffer shall be provided around the site with a mixing of plantings per the Code; that a nature center will be established within the campground; that no lighting is intended in the campground area; that a seven (7) foot tall solid fence is proposed between the site and The Reservation community; that the water park design includes water features, flow rider lagoon, tube slide, wave pool, tot lots, changing facilities, and a lodge for sundry sales, snack sales, etc.; that 180 parking spaces plus 11 handicap spaces are proposed; that they intend to close the water park by 8:00 p.m.; that they intend to develop the site in four (4) phases: (1) the water park and landscaping the buffers; (2) the campground and removal of the existing storage facility, and 18 duplex units; (3) 16 duplex units; and (4) the remaining 26 duplex units; that no rare or endangered species were found on the site; that the original “The Seasons at Bethany Beach” project for the site would have generated 1,000 vehicle trips per day; that the Castaways Bethany project could generate 1,300 vehicle trips per day; that the existing commercial zoning could allow for a convenience store with gas pumps that could generate 4,000 vehicle trips per day; that they have met with DelDOT and that a Traffic Impact Study will not be required; that the Applicants have agreed with DelDOT to install the original agreed upon improvements for “The Seasons at Bethany Beach” project, i.e. right turn lanes, bike paths, multi-modal path, and pedestrian crossing, and to participate in the traffic signal agreement previously established; that the site has a tidal discharge; that they will be using green technologies for stormwater management and best management practices for maintenance, by using bio-swales, filter strips, and bio-retention; that there is an excellent recharge area along the front of the site; that they will comply with the Source Water Protection Ordinance; that they will meet the Total Maximum Daily Loads required for the Inland Bays; that they have met with the Sussex Conservation District; that Mr. Burbage and his family are business owners in Bethany Beach and Ocean View; that the use will enhance the community; that the Applicants own a similar project in Ocean City which has won

numerous rewards for excellence; that crime has not been a problem; that there will be 24 hour security; that the duplex cottages will have a similar style to the old beach cottages in Bethany Beach with approximately 720 square foot of living space per cottage; that the cottages will be site constructed; that they will be providing a bus service to the beaches and elsewhere; that the campground is intended to be family oriented; that the property is privately owned; that, as existing, the site is zoned MR and C-1 and could be developed with permitted uses; that they are certain that the site will be developed in some form; that the intended use will have no more impact than the uses already permitted; that this is not a popularity contest, it is a land use decision process; and that they are requesting approval of the applications.

The Commission found that Mr. Fuqua submitted proposed Findings of Fact which were presented as testimony on behalf of the application, and submitted and read suggested proposed Conditions for consideration, which included the following:

- 1) The maximum number of campground/RV sites shall be one hundred and thirty-nine (139).
- 2) All entrance and other DelDOT requirements shall be completed as required by DelDOT.
- 3) The Development shall be served by the Cedar Neck Expansion of the Bethany Beach Sanitary Sewer District.
- 4) The Development shall be served water for domestic use and fire protection by the Sussex Shores Water Company.
- 5) Stormwater management and sediment and erosion control facilities shall be constructed in accordance with applicable State and County requirements and maintained using best management practices.
- 6) The Applicant shall cooperate and coordinate with the State and County emergency preparedness offices to develop and implement an emergency evacuation plan.
- 7) The Development shall be surrounded by a 50-foot landscaped buffer as shown on the Landscape Buffer Planting Plan and a seven (7) foot fence along the northern boundary of the site.
- 8) The campground/RV park may open no earlier than March 15 each year and shall close no later than the first Sunday of November of each year.
- 9) The campground/RV park shall remain vacant and no campers or RVs shall be stored on the campsites during the period that the campground is closed.
- 10) There shall be no accessory buildings located on individual campsites.
- 11) Campground restrictions shall be submitted as part of the site plan review.
- 12) All units to be used for the purpose of human habitation on campsites shall be tents, travel trailers, recreation vehicles and equipment manufactured specifically for camping purposes.
- 13) The water park component shall be constructed and open for use by the park tenants when the campground opens for use.
- 14) The water park may open no earlier than May 15th each year and shall close no later than October 15th each year.
- 15) The maximum number of multi-family units shall be sixty (60).

- 16) The daily hours of operation of the water park shall be from 10:00 a.m. to 8:00 p.m. for the general public and from 8:00 a.m. to 8:00 p.m. for residents of the campground and multi-family units.
- 17) The water park shall operate in accordance with all applicable laws and regulations of the State and County, including but not limited to laws and regulations related to pool water quality, pool safety, storage of pool chemicals and handicapped accessibility.
- 18) A shuttle bus service shall be provided for residents of the campground and multi-family units from at least the Friday before July 4th to Labor Day of each year.
- 19) One sign not exceeding thirty-two (32) square feet per side with lighting shall be permitted.
- 20) Development and management of the Site shall comply with all State and Sussex County regulations and ordinances applicable to water resource protection.
- 21) Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

The Commission recessed for 10 Minutes.

The Commission found that Mr. Fuqua, Mr. Clark, Mr. Jones, and Mr. Burbage, in response to questions raised by the Commission, stated that the original developers of The Seasons at Bethany Beach had a traffic signal agreement with DelDOT; that the Applicant has agreed to participate in future improvements to the Cedar Neck Road and Fred Hudson Road intersection relating to said agreement; that Area Wide Studies look at other intersections in a larger area; that green technologies are non-structural improvements, i.e. bio-swales, bio-retention areas, filter strips; that the RV sites would have stone parking and grass; that roadways will be paved; that the parking facility has 181 parking spaces planned; that a sewer district pump station exist adjacent to the project in The Reservation Subdivision; that they have not confirmed what DelDOT will require for the proposed pedestrian crossing; that the County Engineering Department does the calculations for the number of EDUs for the water park; that three (3) RV sites equal one (1) EDU; that each multi-family units counts as one (1) EDU; that the Applicants have no objection to a timing to start on each phase of the project; that no permanent structures on RV sites will be permitted; that the RV sites will be vacant when the park is closed; that there will be no seasonal rentals of RV sites; that they intend weekly and/or daily rentals of the RV sites; that signage will be provided to mark sensitive areas near wetlands; that the RV sites will measure at least 40' by 50'; that they are willing to install split rail fencing along the wetland boundaries; that the open space calculation includes the RV sites since they are intended for recreational purposes; that the duplex cottages will also be weekly rentals, some daily; that they will have to comply with DelDOT regulations for bike paths and the multi-modal path along the frontage of the site; and that the buffers will be completed in the first Phase of the project.

The Commission found that Mary Shriver-Fox, Attorney with Steen, Waehler & Fox, P.A., was present in opposition on behalf of Home Owners Associations in Bethany Lakes, Bayside at Bethany Lakes, Salt Pond, The Reservation, Cedar Landing, Quillens Point, and hundreds of residents in the area, and stated that some of the residents made a DVD of the area along Cedar Neck Road on Sunday morning; that the DVD has been made a part of the record for these

applications; that this project may be a wonderful project in Ocean City, but may not be appropriate in Cedar Neck; that over 200 letters and emails have been submitted in opposition; that Cedar Neck Road has no shoulders; that the project will impact pedestrians, bikers, and motor vehicle drivers; that the commercial uses that already exist compliment the residential character of the area; that there are safety issues to consider; that the proposed project will negatively impact the residential character of the area; that the residents acknowledge that the site is in a growth area; that the area around the site must be given some consideration; that the Comprehensive Plan does not reference campsites as a residential use; that the use creates an inconvenience to existing residents; that noise and traffic increases will impact the area making this application an inappropriate use in this location; that a lot of fulltime residents live in the Cedar Neck area and this use will impact their quality of life; that protected lands need to be protected; that this application will impact the James Farm and the State Park lands in the area; that there will be a negative impact on wildlife; questioning if the land has been evaluated by State specialist in reference to rare and endangered species; that the Comprehensive Plan makes reference to mostly passive open space, not a campground and water park; that the water park will create noise and more traffic; that the Comprehensive Plan does not reference rental cottages that cater to transient guests; that DNREC representatives have recommended a 100-foot buffer from wetlands; that the use is only appealing to the seasonal tourism industry and not full time jobs; and requested that the Commission recommend denial of these applications to the benefit of the residents of the area.

The Commission found that Walter Curran, of the Bear Trap Dunes Homeowners Association, Randy Martin, a resident of The Reservation, Loeda Stango, President of the Salt Pond Association, Harry Kreger, a resident of The Reservation, Steve Callanan, a resident of Quillens Point, John Voit, a resident of Quillens Point, Virginia Johnston, a resident of the Cedar Neck Road area, Steve Evans, a resident of The Reservation, David Green, President of Quillens Point Home Owners Association, Steve Swadley, a resident of the Cedar Neck Road area, Elaine Manlove, President of the Cedar Landing Homeowners Association, Bob Bathy, a resident of Quillens Point, Cynthia Funbor, a resident of the Cedar Neck Road area, Steve Gibson, a resident of North Beach, and Rick Sandifer, a resident of Cedar Landing, of the approximately 170 people present in opposition to these applications expressed concerns about vehicle trips; that Cedar Neck Road needs a proper traffic study; that the applications are premature without a traffic impact study; that the campground and multi-family uses create approximately 756 people per day per unit, not counting the people generated by the water park; that the water park and campground are outdoor uses that create noise; that development of the site with housing will also create jobs in construction, maintenance, retail, food services, etc. and will be more compatible with the area; questioning if DelDOT gave any consideration to large trucks pulling large trailers in the area; that the Bethany Lakes community conducted a two hour traffic count at Cedar Neck Road and Fred Hudson Road and counted 2714 vehicles, 74 bicycles, 34 mopeds, and 3 ambulances on calls, not counting the number of pedestrians; that, on occasion, traffic on Fred Hudson Road backs up from Route One to the Harris Teeter Store; that the Millville Volunteer Fire Company uses Cedar Neck Road and Fred Hudson Road to access the Beebe Medical Centers; that Fred Hudson Road occasionally floods; that evacuation in emergency situations is a concern; that roads in the area are not adequate for this type of activity; that safety

concerns for pedestrians, cyclists, and drivers must be given some consideration; that noise and lights impact the residential character of the area; that most of the residents chose this area since it was off the beaten path with multiple access choices; that the uses impact the James Farm, which is owned by the County and operated by the Center for the Inland Bays; that the Commission needs to review the 20 minute video of the area along Cedar Neck Road provided in opposition; that Cedar Neck Road is a dead end road that is very difficult to get in and out due to the narrowness of the road and existing traffic; that approval of these projects will increase the traffic making the traffic situation worse; that the commercial zoning that already exists on the site should be rescinded; that the Commission should go to the Jungle Jim's amusement park near Rehoboth Beach or the water slide park in Fenwick Island to hear the noise generated by a water park; that emergency evacuation is a concern; that emergency response time is a problem during the tourist season; that during the summer season it takes 45 to 55 minutes to go to church, 3.5 miles away, due to the traffic, and only 8 minutes during the off season; that noise pollution, i.e. noise from vehicles, equipment, animals, music, is a concern; that buffers will not reduce the noise; that property values will be negatively impacted; that residents have a fear of additional crimes, due to the lack of regular police protection in the area; that the uses are not compatible to the surrounding area; that the density proposed is not compatible to the surrounding area; that the use will adversely impact the existing infrastructure; that the use will harm the environmental areas contiguous to the east; that there is no water body access to the site, therefore, residents and guests will be traveling offsite to reach the beach, boat ramps, and other attractions; that there is not economic benefit to the community by creating the project due to the transient nature of the project; that the development plans of the project are deficient in many levels, i.e. traffic and special traffic considerations, ecological preservation, storm water management, lighting, landscaping, and other design issues; questioning what Ms. Mary Lighthipe would think about placing a campground and water park at this location across from the James Farm, which she had dedicated to the County for open space; the negative impact anticipated on the James Farm and the Fresh Pond State Park; that this type of application not only impacts Cedar Neck Road, it also impacts Fred Hudson Road; that Fred Hudson Road has become the alternative to the overcrowded Route 26; that drivers currently have to sit through several traffic lights to get to Route One; that ecological sites need to be evaluated on and around this site; that wildlife habitat will be lost by the approval of this project; that campers and boat trailers bring invasive species from other locations; that police, ambulance, and fire services are not readily available; that the only police protection comes from the State Police Barracks in Georgetown; that the typical weight, widths and size of travel trailers and RV vehicles need to be considered because of the weight impact on the roadways and the narrowness of Cedar Neck Road; that Cedar Neck Road is not adequate for pedestrians and cyclists mixing with passing RVs; and that crossing Fred Hudson Road or Cedar Neck Road is not only difficult due to traffic, it is dangerous.

The Commission found that Mr. Burbage, in response to a question, stated that the duplex cottages will be constructed on the site, and that the units are not park model camping units.

The Commission found that Mr. Clark, in response to a question, advised the Commission that the entrance location is not across from Sandy Cove Road, due to the angle of Sandy Cove Road

at the intersection with Cedar Neck Road, and that DelDOT made the recommendation that the entrance be across from the entrance into the G and E grocery store site.

At the conclusion of the public hearings, the Commission discussed these applications.

Mr. Johnson stated that he would like to review the PLUS comments prior to acting on these applications, and would have preferred to have the comments prior to the public hearings.

In reference to C/Z #1719:

Motion by Mr. Smith, seconded by Mr. Ross, and carried unanimously to defer action with the record left open for the PLUS comments, the Applicants responses to the PLUS comments, and the State's response to the Applicants comments and to leave the record open for 14 days for public review and comment, and additionally the record is to be left open for a LONO (Letter of No Objection) from DelDOT and for the Commission to review the letters and DVD. The 14 day period begins from the time the receipt is announced on a future agenda at a public meeting. Motion carried 5 – 0.

In reference to C/Z #1720:

Motion by Mr. Smith, seconded by Mr. Ross, and carried unanimously to defer action with the record left open for the PLUS comments, the Applicants responses to the PLUS comments, and the State's response to the Applicants comments and to leave the record open for 14 days for public review and comment, and additionally the record is to be left open for a LONO (Letter of No Objection) from DelDOT and for the Commission to review the letters and DVD. The 14 day period begins from the time the receipt is announced on a future agenda at a public meeting. Motion carried 5 – 0.

In reference to C/U #1944:

Motion by Mr. Smith, seconded by Mr. Ross, and carried unanimously to defer action with the record left open for the PLUS comments, the Applicants responses to the PLUS comments, and the State's response to the Applicants comments and to leave the record open for 14 days for public review and comment, and additionally the record is to be left open for a LONO (Letter of No Objection) from DelDOT and for the Commission to review the letters and DVD. The 14 day period begins from the time the receipt is announced on a future agenda at a public meeting. Motion carried 5 – 0.

OLD BUSINESS

C/U #1938 – application of **KAREN BARWICK** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a therapist office and residence to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County,

containing 22,161 square feet, more or less, lying north of Route 24 (John J. Williams Highway) 425 feet east of Road 275 (Plantation Road)(Tax Map I.D. 3-34-12.00-85.00).

Mr. Lank advised the Commission that this application has been deferred for further consideration since August 19, 2012.

Mr. Burton stated that he would move that the Commission recommend approval of C/U #1938 for Karen Barwick for a Therapist Office based upon the record made during the public hearing and for the following reasons:

The proposed Conditional Use is appropriate for this section of Route 24, directly across from the Beebe Medical Center Campus.

- 1) The proposed use is primarily a home occupation where the Applicant conducts one-on-one therapy sessions. The need for this Conditional Use is the Applicant's intention to provide group therapy sessions on the premises on a very limited basis.
- 2) The use as a Therapist Office will benefit the health, safety, and welfare of Sussex County residents.
- 3) The project, with the conditions and stipulations placed upon it, will not have an adverse impact on neighboring properties or the community.
- 4) This recommendation for approval is subject to the following conditions:
 - A. The use shall be limited to small group therapy sessions in addition to the one-on-one therapy sessions permitted as a home occupation.
 - B. There shall be no more than seven (7) participants in any group therapy session on the premises. The group sessions will also be limited to two (2) group sessions per week.
 - C. The parking shall be reconfigured to contain only seven (7) spaces, with barriers to prohibit parking on grassy areas. The single parking space nearest the "do not enter" signs shall be eliminated. One additional parking space shall be provided for a handicap space. The Applicant shall also install signage notifying clients that parking on Collins Avenue is prohibited.
 - D. The Applicant shall post a sign at the Collins Avenue exit identifying the reduced speed on that residential roadway.
 - E. The Applicant shall contribute a prorata share of all upkeep and maintenance costs of Collins Avenue.

- F. There shall also be one lighted sign along Route 24 to identify the practice and the entrance. The sign shall not exceed 32 square feet in size per side, and it shall not be illuminated between the hours of 9:00 p.m. and 6:00 a.m.
- G. The hours of the operation shall be between 7:00 a.m. and 8:00 p.m., Monday through Saturday.
- H. There shall not be any parking in the front yard setback.
- I. All entrances and improvements shall comply with all of DelDOT's requirements.
- J. The use shall be served by County Sewer when that service becomes available and shall comply with the requirements of the County Engineering Department regarding any improvements to the system that are required to serve the property.
- K. The Applicant shall submit a revised Preliminary Site Plan addressing the conditions of this approval.
- L. This approval is linked to the Applicant's therapy home occupation. As a result, this Conditional Use shall automatically expire in the event the Applicant no longer resides in the property and the home occupation is no longer valid.
- M. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Burton, seconded by Mr. Johnson, and carried with four (4) votes to forward this application to the Sussex County Council with the recommendation that the application be approved for the reasons and with the conditions stated. Motion carried 4 – 1 with Mr. Wheatley opposing the motion.

Meeting adjourned at 10:05 p.m.